

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

NANDINE PERSAUD,

Plaintiff,

X  
CV 12cv 3251

-against-

CARIBBEAN AIRWAYS LIMITED,

Defendant.

NOTICE OF REMOVAL

ROSS, J.

AZRACK, M.J.

FILED  
CLERK

JUN 28 PM 4:04  
U.S. DISTRICT COURT  
EASTERN DISTRICT  
OF NEW YORK

Defendant CARIBBEAN AIRLINES LIMITED ("CAL") by and through its attorneys, Condon & Forsyth LLP, hereby removes this action to the United States District Court for the Eastern District of New York pursuant to 28 U.S.C. §§ 1330, 1331 and 1441.

1. This action was commenced against defendant CAL by the filing of a Summons and Verified Complaint in the Supreme Court of the State of New York, County of Queens, on or about June 19, 2012. Service of the Summons and Verified Complaint was effected on CAL on or about June 26, 2012. A copy of the Summons and Verified Complaint is attached as Exhibit "A." No further proceedings have been had in this action.

2. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1330(a) because defendant CAL is a "foreign state."

3. This action is brought against a "foreign state" as that term is defined in 28 U.S.C. 1603(a) because:

- (a) Defendant CAL was, at the time this action was commenced, and now is a corporation duly organized and existing under and by virtue of the laws of the Republic of Trinidad and Tobago with its principal place of business at Piarco International Airport, Trinidad;
- (b) All of its capital shares are owned by a foreign state, namely the Republic of

Trinidad and Tobago; and

(c) Defendant CAL is not a citizen of a State of the United States as defined in 28 U.S.C. § 1332 (c) and (d).

4. Defendant CAL is therefore entitled to remove this action to this Court pursuant to 28 U.S.C. § 1441(d).

5. Additionally, based upon the allegations in the Summons with Endorsed Complaint, this Court has original jurisdiction over this action because of the existence of a federal question pursuant to 28 U.S.C. § 1331 and the action is one that may be removed pursuant to 28 U.S.C. § 1441(b).

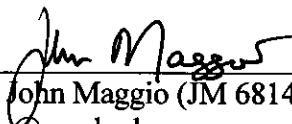
6. Upon information and belief, the transportation out of which the subject matter of this action arose was "international carriage" within the meaning of a treaty of the United States known as the Convention for the Unification of Certain Rules Relating to International Transportation by Air, concluded at Montreal, Canada on May 18, 1999, reprinted in S. Treaty Doc. 106-45, 1999 WL 33292734 (1999) ("Montreal Convention"), and the rights of the parties to this action are governed by the provisions of said Montreal Convention. Accordingly, the underlying action may be removed to this Court by defendant pursuant to the provisions of 28 U.S.C. § 1441(b) as the action arises under a treaty of the United States, the Montreal Convention.

WHEREFORE, defendant CARIBBEAN AIRLINES LIMITED prays that this action now pending in the Supreme Court of the State of New York, County of Queens, be removed therefrom to this Court.

Dated: New York, New York  
June 28, 2012

CONDON & FORSYTH LLP

By

  
John Maggio (JM 6814)  
jmaggio@condonlaw.com  
Times Square Tower  
7 Times Square  
New York, New York 10036  
(212) 490-9100

Attorneys for Defendant  
CARIBBEAN AIRLINES LIMITED

TO: Peter M. Zirbes, Esq.  
PETER M. ZIRBES & ASSOC., P.C.  
Attorneys for Plaintiff  
NANDINE PERSAUD  
108-18 Queens Boulevard, Suite 604  
Forest Hills, New York 11375

CLERK  
Supreme Court of the State of New York  
County of Queens  
88-11- Sutphin Blvd.  
Jamaica, New York 11435  
Index No. 12853/12

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK )  
                        ) ss:  
COUNTY OF NEW YORK )

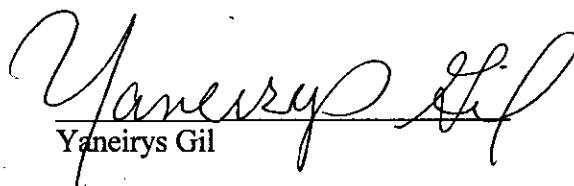
Yaneirys Gil, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides in the Bronx, New York. That on the 28<sup>th</sup> day of June, 2012 deponent served the within **NOTICE OF REMOVAL** upon:

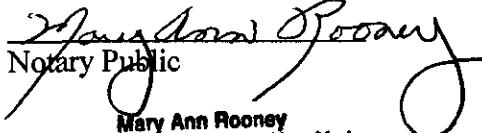
Peter M. Zirbers, Esq.  
PETER M. ZIRBES & ASSOCIATES, P.C.  
108-18 Queens Boulevard, Suite 604  
Forest Hills, New York 11375

CLERK  
Supreme Court of the City of New York  
County of Queens  
88-11 Sutphin Blvd.  
Jamaica, New York 10007-1474  
Index No. 12853/12

at the addresses designated by said attorneys for that purpose by depositing same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Sworn to before me this  
28<sup>th</sup> day of June, 2012

  
\_\_\_\_\_  
Yaneirys Gil

  
\_\_\_\_\_  
Notary Public  
Mary Ann Rooney  
Notary Public, State of New York  
No. 01RO4872708  
Qualified in Queens County  
Commission Expires May 31, 2014



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

NANDINE PERSAUD,

Plaintiff,

-against-

CARIBBEAN AIRLINES LIMITED,

Defendant.

Index No.: 12853/12

Date Purchased:

SUMMONS

6/19/12

Basis of Venue:

Plaintiff's residence

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to appear in the Supreme Court of the City of New York, County of Queens, at 88-11 Sutphin Boulevard, Jamaica, NY 11435, in the State of New York, by serving an answer to the annexed Verified Complaint, upon Plaintiff, an attorney, and pro se litigant, at the address stated below within the time frame provided by law, as noted below. Upon failure to answer, judgment will be taken against you for the relief demanded in the complaint, together with interest and costs of the action.

DATED: June 14, 2012  
Forest Hills, New York

PETER M. ZIRBES & ASSOC., P.C.

  
Peter M. Zirbes, Esq.  
Attorneys for Plaintiff  
108-18 Queens Boulevard  
Suite 604  
Forest Hills, NY 11375  
(718) 268-8800

TO: CARIBBEAN AIRLINES LIMITED  
C/o Condon & Forsyth, LLP  
7 Times Square, 18<sup>th</sup> Floor  
New York, NY 10036  
Register agent for service of process

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

-----X  
NANDINE PERSAUD,

Index No.:

Plaintiff,

VERIFIED COMPLAINT

-against-

CARIBBEAN AIRLINES LIMITED,

Defendant.

-----X

Plaintiff, by her attorneys, PETER M. ZIRBES & ASSOC., P.C., hereby alleges and complains against the Defendant as follows:

*JURISDICTION AND VENUE*

1. That at all times mentioned herein, Plaintiff, NANDINE PERSAUD, was and still is a resident of the County of Queens, City and State of New York.
2. Defendant, CARIBBEAN AIRLINES LIMITED, is a foreign corporation, organized and existing under the laws of Trinidad and Tobago, maintains its principal place of business in Trinidad and Tobago, and is engaged in business through its offices located at JFK Airport, Jamaica, New York.
3. Defendant, CARIBBEAN AIRLINES LIMITED, maintains a registered agent for service of process within New York State at the offices of Condon & Forsyth, LLP, 7 Times Square, 18<sup>th</sup> Floor, New York, NY 10036.

*GENERAL ALLEGATIONS*

4. On July 30, 2011, the Plaintiff was a fare-paying passenger on board a Boeing 737-800 aircraft, registration no. 9Y-PBM (hereinafter referred to as the "subject aircraft"), operated by the Defendant, CARIBBEAN AIRLINES LIMITED as Caribbean Airlines Flight BW523 (hereinafter referred to as the "subject flight"), originating in New York City, and was traveling from Port of Spain, Trinidad to Georgetown, Guyana.
5. While landing at Cheddi Jagan International Airport, Georgetown, Guyana, on July 30, 2011, the subject aircraft failed to decelerate, overran the end of the runway, broke through a perimeter fence, fell onto a perimeter road, and broke up, with the front section of the fuselage separating just ahead of the wing root.
6. As a result of the foregoing, the Plaintiff was forced to endure severe mental anguish, fear of impending death, and ultimately sustained severe physical injuries.
7. On and prior to July 30, 2011, the Defendant, CARIBBEAN AIRLINES LIMITED, was a commercial carrier engaged in the business of carrying passengers for hire and operated regularly scheduled passenger flights between several cities in the United States, Canada and Great Britain and destinations in the Caribbean Islands and South America.

8. At all time relevant, the subject flight was under the operation, control, direction and instruction of Defendant, CARIBBEAN AIRLINES LIMITED, its officers, agents, servants and/or employees.
9. The crash of the subject aircraft was caused by the negligent servicing, maintenance, repair, operation and piloting of the subject aircraft by the Defendant, CARIBBEAN AIRLINES LIMITED.

*AS AND FOR PLAINTIFF'S CLAIM FOR SURVIVAL DAMAGES*

10. The Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 9 as if more fully set forth herein.
11. On July 30, 2011, the Defendant, CARIBBEAN AIRLINES LIMITED, as a common carrier, owed the highest degree of care to maintain the safety of the injured Plaintiff.
12. Said crash, and the Plaintiff severe personal injuries, and resulting pain, suffering and damages, were solely caused by the negligence and carelessness of the Defendant, CARIBBEAN AIRLINES LIMITED, including its officers, agents, servant and employees, in that the Defendant, CARIBBEAN AIRLINES LIMITED, failed to properly operate the subject aircraft with due care and caution, failed to provide air transportation in a manner reasonably calculated to ensure the safe completion of Caribbean Airlines Flight BW523, negligently trained, instructed or supervised its flight crew regarding the safe operation of the

subject aircraft, negligently hired and improperly trained unqualified flight crews, including the crew of Caribbean Airlines Flight BW523, and was otherwise negligent in the operation, maintenance and control of the subject aircraft.

13. As a result of the foregoing, the Plaintiff, NANDINE PERSAUD, is entitled to recover for her physical injuries, her pain and suffering caused by these injuries, scarring, disability, disfigurement, mental anguish, loss of enjoyment of life, cost of medical expenses, loss of earning capacity and earnings, and any and/or all other damages permitted under the applicable law.
14. As a result of the foregoing, the Defendant, CARIBBEAN AIRLINES LIMITED, is liable to the Plaintiff for compensatory damages in a sum sufficient to satisfy the jurisdictional requirements of this Honorable Court.

WHEREFORE, the Plaintiff prays for a monetary judgment in a sum sufficient to satisfy the jurisdictional requirements of this Honorable Court, together with interest, costs and all disbursements of this action.

Dated: Forest Hills, New York  
June 14, 2012

PETER M. ZIRBES & ASSOC., P.C.

By:

  
Peter M. Zirbes, Esq.  
Attorneys for the Plaintiff  
108-18 Queens Boulevard  
Suite 604  
Forest Hills, NY 11375  
(718) 268-8800

I, the undersigned, being duly sworn, depose and say that I am the plaintiff in this action; that I have read the foregoing Complaint/Bill of Particulars and know the contents thereof, and the same is true to my own knowledge except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe to be true.

Dated: Forest Hills, New York

X Diamond Pensaud

Sworn before me this 29<sup>th</sup> June

Day of JULY,

